



Telecom Order CRTC 2009-111

Ottawa, 3 March 2009

Cybersurf's application related to the implementation of Telecom Decision 2008-117 regarding the matching speed requirement

File number: 8622-C122-200902230

Introduction

1. On 13 January 2009, Cybersurf Corp. (Cybersurf) requested that the Commission issue an order directing Bell Canada to file tariffs pursuant to Telecom Decision 2008-117 for wholesale aggregated asymmetric digital subscriber line (ADSL) services (comprising both Gateway Access Services (GAS) and High Speed Access services (HSA)) for any ADSL access service speeds provided to Bell Canada's retail Internet customers.
2. The Commission received comments from Bell Aliant Regional Communications, Limited Partnership (Bell Aliant) and Bell Canada (the Bell companies), Distributel Communications Limited (Distributel), Managed Network Systems Inc. (MNSi), MTS Allstream Inc. (MTS Allstream), TELUS Communications Company (TCC), and Yak Communications (Canada) Corp. (Yak). The record of this proceeding, which closed on 28 January 2009, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Related matter

3. On 15 January 2009, TCC requested that the due date for tariff filings by the Bell companies, MTS Allstream, SaskTel, and TCC, the incumbent local exchange carriers (the ILECs),¹ pursuant to Telecom Decision 2008-117 be extended from 26 January 2009 to 12 March 2009. Parties were advised in a letter dated 23 January 2009 that filings were not required to be made by 26 January 2009. This order also addresses the due date for the follow-up tariff filings required pursuant to Telecom Decision 2008-117.

Background

4. In Telecom Decision 2008-117, the Commission directed the ILECs to provide wholesale aggregated ADSL services at service speeds that matched the Internet service speeds provided to their retail customers. In comments filed in response to an earlier application by Cybersurf,² requesting clarification of the scope of Telecom Decision 2008-117, Bell Canada asserted that the decision required ILECs to provide wholesale aggregated ADSL services that match their retail Internet service speeds only where the wholesale aggregated ADSL services were offered over purely copper facilities. In Bell Canada's view, where retail Internet services were offered over a fibre to the node (FTTN) solution, there was no requirement for an ILEC to provide wholesale services that matched the service speeds of its retail services.

¹ Telecom Decision 2008-117 made the ILECs subject to the matching speed requirement.

² Cybersurf's application was made in response to Bell Canada's comments related to an earlier Cybersurf application dated 15 December 2008 that sought a clarification of Telecom Decision 2008-117. This application was subsequently withdrawn by Cybersurf.

5. Bell Canada indicated that its interpretation of Telecom Decision 2008-117 was based on the statement in paragraph 22 of that decision that "this proceeding is limited to addressing the issue of matching service speeds of the ILECs' aggregated ADSL access services, which are provided over copper facilities."

Positions of parties

6. Cybersurf, supported by Distributel, MSNi, MTS Allstream, and Yak, submitted that Bell Canada's interpretation of Telecom Decision 2008-117 was inconsistent with that decision given that most telecommunications services are provided over networks that have at least some fibre components. In their view, Bell Canada's interpretation would allow the ILECs to avoid their regulatory obligations simply by adding a fibre medium over some part of the network.
7. Cybersurf further submitted that the third party Internet access (TPIA) services of the cable companies are subject to a matching speed requirement and that their networks consist of a hybrid fibre/coaxial cable technology. In Cybersurf's view, the Commission would not have maintained this requirement for cable companies if it had intended that services provided over ILEC FTTN networks be exempt.
8. Cybersurf also submitted that its original application requesting a matching speed requirement was motivated by its inability to obtain a 7 Mbps wholesale aggregated ADSL service from Bell Canada, a service speed that Cybersurf understood Bell Canada was providing to its retail Internet customers over the company's FTTN network. In Cybersurf's view, Telecom Decision 2008-117 clearly intended that such a service should be made available to Internet service providers.
9. The Bell companies and TCC submitted that the Commission's reference to copper facilities in paragraph 22 of Telecom Decision 2008-117 was clearly intended to set out a limitation on the application of the matching speed principle. TCC submitted that the scope of Telecom Decision 2008-117 should be limited to existing ADSL services supporting high speed Internet access in order to encourage continuing investment and innovation in copper-based facilities to provide broadband services as well as the deployment of next generation network services.
10. The Bell companies and TCC further submitted that the Commission had never previously established mandated access requirements with respect to services provided over FTTN and next generation network facilities. They also submitted that it would be contrary to the Policy Direction³ to do so. The Bell companies submitted that the matter should be considered as part of a public proceeding to examine access to next generation network facilities.
11. TCC submitted that in Telecom Decision 2008-17, the Commission had incorrectly classified wholesale aggregated ADSL services as conditional mandated non-essential services given that Ethernet access and transport were found to be services subject to phase-out. TCC further argued that the Commission was incorrect in finding in Telecom Decision 2008-117 that a matching speed requirement would not significantly impact ILEC investment decisions. TCC

³ The Governor in Council issued *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006.

also argued that the Commission's determinations in Telecom Decision 2008-117 were inconsistent with the Commission's findings in Telecom Decision 2008-116 in that Telecom Decision 2007-117 presumed that new aggregated ADSL services would be regulated whereas Telecom Decision 2008-116 established that the need to regulate new wholesale services would be assessed on a case by case basis.

Commission's analysis and determinations

12. The Commission considers that Bell Canada's interpretation of Telecom Decision 2008-117 is unduly narrow and would render the requirements of that decision virtually meaningless. The Commission's reference to "copper facilities" in paragraph 22 of Telecom Decision 2008-117 means that to the extent that the service is provided over a path that includes copper facilities, the service is subject to the requirements of the decision.
13. With respect to TCC's submission that Telecom Decision 2008-117 applies to existing services only, the Commission considers that the provision of Internet access to retail customers at a new speed does not constitute the provision of a new service but rather the provision of the same service, i.e., Internet access, at a different bandwidth. The same conclusion applies to wholesale aggregated ADSL services.
14. The Commission notes that many of the arguments made by the Bell companies and TCC, such as the argument that the matching speed requirement disincentivizes ILEC investment, question the appropriateness or correctness of the determinations in Telecom Decision 2008-117. TCC also submitted argument regarding the correctness of Telecom Decision 2008-17. As such, these arguments are beyond the scope of this proceeding and have not been considered.
15. In light of the above, the Commission directs the ILECs to comply with the requirements of Telecom Decision 2008-117, having regard to the clarification set out in this order. With respect to existing retail service speeds, where there is demand by a competitor for a matching wholesale aggregated ADSL service from an ILEC, that ILEC is directed to file proposed revised tariff pages for that service speed pursuant to Telecom Decision 2008-117 within 10 days from the date of this order.

Secretary General

Related documents

- *Cybersurf Corp.'s application related to matching service speed requirements for wholesale Internet services*, Telecom Decision CRTC 2008-117, 11 December 2008

- *Forbearance framework for new non-essential wholesale services*, Telecom Decision CRTC 2008-116, 11 December 2008
- *Revised regulatory framework for wholesale services and definition of essential service*, Telecom Decision CRTC 2008-17, 3 March 2008

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